

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s “motion to vacate or amend judgment obtained by fraud upon the court” under Rule 60(b)(3) of the Federal Rules of Civil Procedure. The motion is denied.

On December 21, 2009, the Court denied petitioner's petition for writ of audita querela because petitioner's only avenue for relief was under 28 U.S.C. § 2255. In his motion for relief from judgment, petitioner does not put forth any argument to the contrary. Nor has petitioner alleged any facts that demonstrate fraud upon the Court.

“A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” As a result, petitioner’s motion is untimely. Moreover, the motion has not set forth any facts demonstrating that petitioner is entitled to relief.

Accordingly,

IT IS HEREBY ORDERED that petitioner's "motion to vacate or amend judgment obtained by fraud upon the court" [ECF No. 16] is **DENIED**.

Dated this 16th day of October, 2013.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE